

STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
165 Mitchell Building
PO Box 200135
Helena, MT 59620-0135
Phone: (406) 444-2575 Fax: (406) 444-2529
TTY Users-Dial 711
<http://www.mt.gov/doa/gsd>

T.C. #: SPB08-1486D
Title: Debt Collection Services
This is a non-exclusive contract.

CONTRACT TERM	FROM	February 18, 2008	CONTRACT STATUS	NEW (XX)
	TO	December 31, 2010		RENEW ()
VENDOR ADDRESS	NCO Financial Systems, Inc. 507 Prudential Road Horsham, PA 19044		ORDER ADDRESS	
ATTN:	Steven L. Winokur		ATTN:	
PHONE:	(800) 220-2274		PHONE:	
FAX:	(215) 441-3923		FAX:	
E-MAIL:	marketing@ncogroup.com		E-MAIL:	

PRICES: Per Agreement

DELIVERY: Per Agreement

F.O.B.: Per Agreement

TERMS: Per Agreement

REMARKS:

IFB/RFP No.: RFP08-08-1486D

Devin Garrity, CONTRACTS OFFICER

DATE:

AUTHORIZED SIGNATURE

APPENDIX B: CONTRACT

1. Parties
2. Effective Date, Duration, and Renewal
3. Services and/or Supplies
4. Confidentiality
5. Publicity
6. Default - Remedies of State
7. Retention of Pay Files
8. Judgments
9. Bankruptcy
10. Obligations Beyond Contract Term
11. Non - Exclusive
12. Consideration/Payment
13. Access and Retention of Records
14. Assignment, Transfer, and Subcontracting
15. Hold Harmless/Indemnification
16. Required Insurance
17. Compliance with Workers' Compensation Act
18. Compliance with Laws
19. Contract Termination
20. Liaison and Service of Notices
21. Meetings
22. Contractor Performance Assessments
23. Transition Assistance
24. Choice of Law and Venue
25. Cooperative Purchasing
26. Scope, Amendment, and Interpretation
27. Execution

**Debt Collection Services
08-1486D**

1. PARTIES

THIS CONTRACT is entered into by and between the State of Montana Department of Administration, (hereinafter referred to as "the State"), whose address and phone number are 125 N Roberts 165 Mitchell Building, Helena, MT 59620, (406) 444-2575 and NCO Financial Systems, Inc., (hereinafter referred to as the "Contractor"), whose address and phone number are 507 Prudential Road, Horsham, PA 19044 and 800-220-2274.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect upon contract execution and terminate on December 31, 2010, unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

3. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State debt collection services.

4. CONFIDENTIALITY

- A. The Contractor must treat all information which it obtains by its performance under the Contract, as **private/confidential information, as provided under State and Federal law**.
- B. No private or confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by statute, either during the period of the Contract or thereafter. The Contractor shall protect the information contained in any necessary database(s) and provide safeguards ensuring that the information will be used only for the following purposes:
1. Collecting Agency debt and locating individuals owing money to the Agency.
 2. Allowing the Contractor to report updated information on referred receivables.
 3. Allowing the Contractor to report on the initiated activities to collect delinquent receivables.
 4. Allowing the Contractor to explain the basis for collection action to debtors.

Use of the information contained in any necessary database(s) for any purpose other than those stated above shall be considered a material breach of the confidentiality requirements of this Contract.

- C. Contractor agrees:
1. That information provided by the Agency cannot be used to collect or locate any other debt except Agency debt. In addition, information provided by the ORS, State Tax Commission, Workforce Services, etc. may be limited to the use of collecting and/or locating that agency's receivables and when prohibited by law may not be used for the purpose of collecting receivables referred by other Agencies.
 2. That no information can be disseminated except as authorized by statute, either during the period of the Contract or thereafter.

3. Not to use or permit the use of the names and/or addresses of receivables referred from the Agency for any commercial purpose.
4. The Contractor's employees shall sign Confidentiality Agreements provided by the Agency before gaining access to receivable information. The Contractor shall maintain a continuously updated file of copies of signed Confidentiality Agreements and forward the original copy to the Agency.
5. The Contractor agrees it will, if necessary, resist in judicial proceedings any efforts to obtain access to private or confidential records and shall assume full responsibility and liability for any damages, attorney fees, and court costs resulting from violation of information safeguarding requirements by its employees.

5. PUBLICITY

- A. Any publicity given to the program or series provided herein, including, but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Agency as the sponsor and shall not be released prior to approval by the Agency.
- B. The Contractor shall immediately, upon receipt of requests for public information, including but not limited to information concerning this Contract, concerning a Debtor, statistical, demographic or other information, direct the inquiry or request to the Agency. The Contractor shall not release any public information concerning this Contract or a debtor without the express consent of the Agency. Additionally, during the term of this Contract or any extension thereof, the Contractor shall not issue or cause to have issued, directly or indirectly, any press releases regarding the Agency, nor shall the Contractor, directly or indirectly, conduct interviews with members of the press concerning the affected Agency or the collection of receivables subject to this Contract without the prior knowledge of the Agency.

6. DEFAULT - REMEDIES OF STATE

- A. Should an Agency obtain a money judgment against the Contractor as a result of a breach of this Contract, the Contractor consents to such judgment being offset against monies owed the Contractor by the Agency under this Contract.
- B. Amounts due to an Agency as liquidated damages or any other damages may be deducted by the Agency without a judgment or any court action from any money payable to the Contractor pursuant to this Contract. The Agency shall notify the Contractor in writing of any claim for liquidated damages or any other damages on or before the date the Agency deducts such sums from money payable to the Contractor.
- C. If an Agency terminates this Contract for a breach of the Contract, the Contractor shall not be entitled to retention of pay files as outlined in Section 7 below.

7. RETENTION OF PAY FILES

Except as otherwise provided herein, in the event that the Contract between the Contractor and an Agency expires, all receivables placed with the Contractor shall be returned to the Agency for enforcement. However, while a receivable remains in payment status (payments are made within thirty days of the date due), the Agency shall continue to pay the Contractor for collections received on the receivable for a period of 6 consecutive months following expiration of the Contract or until the receivable is paid in full whichever is earlier. In the event that a debtor breaches the payment Contract, the receivable will no longer be considered in payment status, and payment to the Contractor shall cease.

8. JUDGMENTS

The Agency shall satisfy all judgments that have been fully discharged by Debtors. The Contractor shall not induce a Debtor to pay a receivable upon a false promise or assurance that a judgment will be satisfied, nor is the Agency bound by assertions made by a Contractor to a Debtor that judgment will be satisfied. The Contractor shall not file any documents with any court or other entity that purports to satisfy a judgment on behalf of the Agency.

9. BANKRUPTCY

The filing of any bankruptcy procedure may be considered a breach of contract.

10. OBLIGATIONS BEYOND CONTRACT TERM

All obligations of an Agency and the Contractor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Contract.

11. NON-EXCLUSIVE

The Offeror acknowledges that the Agencies may have current contracts with other Private Sector Collectors for the provision of services similar to those requested under the RFP. Additionally, the Offeror acknowledges that Montana law permits the Judiciary certain collection remedies including the right of the various county and State attorneys to collect fines and judgments. It shall not be considered a default by the State or a termination of this Contract for the State to place certain receivables for collection under the terms of the contracts with other Offerors, or for any State Agency to pursue other collection remedies against Debtors.

12. CONSIDERATION/PAYMENT

12.1 Payment Schedule. In consideration for the debt collection services to be provided, the State shall pay according to the following schedule: 30 days after receipt of a properly executed invoice.

12.2 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

13. ACCESS AND RETENTION OF RECORDS

13.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Section 18-1-118, MCA)

13.2 Retention Period. The Contractor agrees to create and retain records supporting the debt collection services for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party.

14. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

15. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

16. REQUIRED INSURANCE

16.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

16.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

16.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products, and completed operations; premises owned, leased, occupied, or used.

16.4 Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$5,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

16.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

16.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State

immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

17. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.

18. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

19. CONTRACT TERMINATION

19.1 Termination for Convenience. The State may, by written notice to the Contractor, terminate this contract without cause. The State must give notice of termination to the Contractor at least 30 days prior to the effective date of termination.

19.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See section 18-4-313(4), MCA.)

20. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Devin Garrity will be the liaison for the State.
125 N Roberts, 165 Mitchell Building
Helena, MT 59620
Telephone: (406) 444-3366
Fax: (406) 444-2529
E-mail: dgarrity@mt.gov

Steven L. Winokur, will be the liaison for the Contractor.
NCO Financial Systems, Inc.
507 Prudential Road
Horsham, PA 19044
Telephone: 800-220-2274
Fax: (215) 441-3923
E-mail: marketing@ncogroup.com

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

21. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

22. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

23. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

24. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

25. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public

procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

26. SCOPE, AMENDMENT, AND INTERPRETATION

26.1 Contract. This contract consists of 8 numbered pages, any Attachments as required, SPB08-1486D, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

26.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

27. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

Department of Administration
125 N Roberts, 165 Mitchell Building
PO Box 200135
Helena, MT 59620

NCO Financial Systems, Inc.
507 Prudential Road
Horsham, PA 19044

BY: Devin Garrett / Program Mgr
(Name/Title)
[Signature]
(Signature)
DATE: 2-5-08

BY: Steven L. Winkler / EVP
(Name/Title)
[Signature]
(Signature)
DATE: 2-18-08

Approved as to Legal Content:

[Signature] 2/5/08
Legal Counsel (Date)

Approved as to Form:

[Signature] 2-5-08
Procurement Officer (Date)
State Procurement Bureau